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| APPLICATION NO.                                 | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/027,954                                      | 12/19/2001  | Frank Venegas JR.    | IDS-14602/14        | 2646             |
| 25006   | 7590        | 08/25/2006           | EXAMINER            |                  |
| GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C |             |                      | KATCHEVES, BASIL S  |                  |
| PO BOX 7021                                     |             |                      | ART UNIT            |                  |
| TROY, MI 48007-7021                             |             |                      | PAPER NUMBER        |                  |
|   |             |                      | 3635                |                  |

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/027,954

Applicant(s)

VENEGAS, FRANK

Examiner

Basil Katcheves

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*Basil Katcheves*  
BASIL KATCHEVES  
PATENT EXAMINER  
8/21/06

### **DETAILED ACTION**

Pending claims 1, 2 and 4 are examined below. Claim 3 is withdrawn and claim 5 is canceled.

#### ***Drawings***

The drawings were received on 6/6/06. These drawings showing the saddle weld are approved.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,261,647 to Venegas, Jr. et al. in view of U. S. Patent No. 4,891,926 to Allenbaugh.

Regarding claims 1 and 2, Venegas, Jr. et al. discloses a guard rail assembly comprising a pair of vertical metal side members (22, Figure 2 and column 2, lines 49-50) covered by polymeric sheathing (26 and 30, Figure 2), a horizontal metal member (50, Figure 2 and column 2, lines 56-57) covered by polymeric sheathing (54, Figure 2, column 2, lines 57-58) spanning the two vertical members, the horizontal member has a length that extends beyond the outermost extent of the vertical side members (as best illustrated in Figure 1). The vertical and horizontal members are attached by way of

removable fastener (38, Figure 2 and column 3, lines 4-6). Venegas, Jr. et al. does not specify that the horizontal and vertical rails are connected with a saddle weld.

Allenbaugh discloses a guard rail assembly connected by welding (column 7, lines 64-66) into a saddle weld (fig. 4: welds between 100 to 84 and 86). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Venegas by using a saddle weld, as disclosed by Allenbaugh, in order to create an impermeable seal and strengthen the bond between components 21 (left and right) to components 50 and 42, respectively.

Regarding claim 4, Venegas discloses the use of removable fasteners (38) for connecting the members.

### ***Response to Arguments***

Applicant's arguments filed 6/6/06 have been fully considered but are moot under new grounds of rejections necessitated by the applicant's amendment of 6/6/06.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack, can be reached at (571) 272-6848.

BK

  
Basil Katcheves

8/21/06

Primary Examiner, AU 3635